

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present:

Sri. Joseph Rajesh K.A., Munsiff.

Thursday the 30<sup>th</sup> day of August, 2018/8<sup>th</sup> Bhadra 1940

**I.A No.1747/2018 in O.S No.167/2008**

Applicant/Plaintiff

Vinayan, aged 61 years, S/o Govinthan Nair,  
Pulari House, Kadathy Kara,  
Velloorkunnam Village, Muvattupuzha Taluk.

By Advocate Sri A.C.Thomas Adhikaram

Respondents/Defendants

- 1 N.S.S. Muvattupuzha Taluk Union,  
Velloorkunnam Village, Muvattupuzha Taluk,  
represented by its President.
- 2 N.S.S. Velloorkunnam Karayogam,  
Velloorkunnam Village, Muvattupuzha Taluk,  
represented by its Secretary.

By Advocates M/s. P.K.Prasannan, B.Rajeevan  
N.Ramesh & Sanitha T.R.

This petition coming on for final hearing on 19.7.2018 and on consideration of Exts.A1 to A10, B1 series and B2 series, C1 series, C2 series and C3 series, the court on 30.8.2018 passed the following:

**ORDER**

This is a petition for temporary mandatory injunction.

2. Averments in the affidavit filed in support of the I.A in brief are as follows:- The suit is one for permanent prohibitory injunction restraining the defendants 1 and 2 and their men or agents from causing any obstructions to petitioner's enjoyment of NSS road passing through the eastern side of plaint schedule property as an access to the plaint schedule property. Along with the suit, petitioner filed I.A.1230/08 for interim

injunction and on 02.04.2008 the I.A was allowed. Against the order, respondents filed CMA 2/08 before the Sub Court, Muvattupuzha and the Sub Court dismissed the appeal and confirmed the order in I.A.No.1230/08. Against which, the respondents filed W.P(C) No.3500/08 before the Hon'ble High Court and it was also dismissed. On 01.07.18 at about 10 am, in flagrant violation of the order in I.A.No.1230/18, respondents and their men constructed iron barbed wire fencing on the western side of NSS road separating plaint schedule property and thereby caused obstruction to the access of the building in the plaint schedule property. Room No.177/A/8 of Muvattupuzha Municipality is leased out to Davani Silks Pvt. Ltd as a godown in the building in the plaint schedule property. Now by the construction of the fencing, the tenant is not in a position to carry goods to the said godown. Respondents are continuously violating the order of injunction and disobeyed the order of injunction hence the respondents are to be directed to remove the fencing on the western side of NSS road.

3. Respondents filed counter and the averments therein in brief are as follows:- There was an access to the plaint schedule property from the NSS road and that access is not obstructed by the respondents. The order

in I.A.No.1230/08 was not to obstruct the plaintiff's enjoyment of NSS road passing through the eastern side of the plaint schedule property. In between the plaint schedule property and the NSS road, respondents have properties. Plaint schedule property had no access from the property of the respondents and when a multi storied building was constructed, petitioner wanted an access to his third floor through the property of the respondents. For that purpose, petitioner made a ramp from the property of respondents and at that time, O.S.No.179/08 was filed against the petitioner and it is pending before the Court. The copy of Commission Report and Rough Sketch in O.S.No.179/08 are produced. The access to plaint schedule property from the NSS road which was therein in 2008 is still there and no obstruction is made. The barbed wire fencing is made not in violation of the order and the fencing is made on the existing old boundary and is not liable to be removed. Hence prayed for dismissal of the I.A.

4. On the side of the petitioner, for the purpose of this I.A, Exts.A1 to A10 were marked. On the side of the respondents, Exts.B1 series and B2 series marked. Ext.C1 series to C3 series were also marked.

5. Now, the points that arise for consideration are:

1. Whether the petitioners has a strong prima facie case in his favour ?
2. Whether the balance of convenience is in favour of the petitioner?
3. Whether petitioner will be put to irreparable loss, injuries and hardships, if injunction is not granted ?
4. What shall be the proper order ?

6. **Points 1 to 3**:- For convenience and brevity, these points are considered together. It is well settled in law that in order to grant an interim mandatory injunction, the petitioner must show a strong prima facie case which is in a superlative degree than required in an ordinary temporary prohibitory injunction.

7. It is not in dispute that I.A.No.1230/08 filed for temporary prohibitory injunction was allowed by this Court and the two tier challenge made against the order was unsuccessful and it has become final.

8. The defendants have delivered their defense and the pleadings have completed. The core of the dispute even at the time of I.A.No.1230/08 was in respect of a strip of land lying in between the plaint schedule property and the eastern NSS road. The respondents claimed that a strip of land in between the plaint schedule property and

the NSS road is owned by them. Whereas, it was claimed by the petitioner that it is the abutting land of the plaint schedule property and giving access to the plaint schedule property to the NSS public road. By the written statement of the third defendant, Muvattupuzha Municipality and the pleadings of the parties, there is no dispute that on the eastern side of the plaint schedule property, a Municipal road is in existence which is lying in north-south direction and of course, used by general public. It is important to note that the very same contentions were raised by the respondents in I.A.No.1230/08 and resisted the prayer of injunction. I shall straight away refer to the injunction order passed in I.A.No.1230/08 for deciding this I.A. it reads,

“(1) Respondents or anybody claiming under them are restrained from causing any obstruction to the petitioner’s enjoyment of the eastern side of the NSS road as access to the plaint schedule property (under line supplied by me).

9. On appreciation of the contentions regarding claim of ownership in respect of the strip of land lying in between the road and plaint schedule property, this court has ordered that the eastern side of the NSS road shall not be obstructed as an access to the plaint schedule property. The interpretation attempted to by the respondents in respect

of the order in I.A.No.1230/08 is only to be rejected as the court has passed order of injunction considering the very same contentions raised by the respondents in respect of the strip of land lying in between the plaint schedule property and the eastern NSS road.

10. There was no finding that the plaint schedule property have another access as contended by the respondents in the I.A. As regards the putting up of barbed wire fencing, from Ext.C3 it is proved that recently, the respondents have put up barbed wire fencing on the eastern side of the plaint schedule property by erecting four concrete posts and at presents the access from the plaint schedule property to the eastern NSS road is blocked.

11. So, the status of the suit property has been materially changed since the suit and the spirit of the order in I.A.No.1230/08 is defied by the respondents. This cannot be permitted. When a party is altering the status of the suit property pending suit without the permission of the court and in negation of a prohibitory order, court cannot sit as a mute spectator to permit the illegality to continue. The illegal acts of the respondents are to be undone and that the status of the suit property is to be restored back. It is necessary for maintaining the rule of law and to keep the subject matter of the suit in tact. Therefore, the petitioner has a

strong prima facie case in his favour and the balance of convenience is tilting heavily on the side. If injunction is not granted, he will be put to irreparable loss, injuries and hardships and use of the plaint schedule property will become impossible. Hence, petitioner is entitled to get the relief of mandatory injunction. The points are found accordingly.

12. **Point No.4:-** In view of the findings on Point Nos.1 to 3, this I.A is only to be allowed. Considering the developments subsequent to I.A.No.1230/08, it is only proper to order the respondents to pay cost.

In the result, the I.A is allowed as follows:

1. Respondents are directed to dismantle and remove the iron barbed wire fencing put up on the western side of the NSS road sharing the boundary with plaint schedule property within two weeks from today at their cost and expenses. Failing which, petitioner may execute the mandate through the process of court and in that event, respondents shall be liable for the cost incurred thereon.
2. Petitioner is entitled to get cost of this petition from the respondents.

Dictated to the Confidential Asst., transcribed and typewritten by him , corrected and pronounced by me in the open court on this the 30<sup>th</sup> day of August 2018.

Sd/-

Joseph Rajesh K.A.,  
Munsiff.

APPENDIXPetitioner's Exhibits

A1	25.4.2001	Certified copy of Sale deed No.1863/01 of Muvattupuzha SRO.
A2	26.4.2001	Certified copy of Sale deed No.1864/01 of Muvattupuzha SRO.
A3	26.10.2002	Certified copy of Sale deed No.3911/02 of Muvattupuzha SRO.
A4	28.10.2003	Certified copy of Sale deed No.4661/03 of Muvattupuzha SRO.
A5	30.10.2003	Certified copy of Sale deed No.4662/03 of Muvattupuzha SRO.
A6		Copy of Tax Receipt No.2749999 of Velloorkunnam Village.
A7		Copy of sketch in Sy No.836/7E
A8	25.9.2007	Memo No.I PW 1-8894/07 issued by Muvattupuzha Municipality.
A9	-	Copies of building permit No.284/03-04 dated 29.9.07, 284/04-05 dated 2.3.2005 & 284/03-04 dated 20.1.2007 issued by the Secretary, Muvattupuzha Municipality.
A10		Photos (2 Nos).

Respondents' Exhibits

B1series		Photocopy of commission report and rough sketch in O.S.179/08 of Munsiff's Court, Muvattupuzha.
B2 series		Photos

Court Exhibits

C1	1.4.2008	Commission report filed by Advocate Commissioner Biju John.
C1(a)	“	Sketch attached with C1 report

- C2        8.4.2008    Commission report filed by Advocate Commissioner Biju John.
- C2(a)                      Sketch attached with C2 report.
- C3        2.7.2013    Commission report filed by Commissioner Advocate Sherman A. George.
- C3(a)        “              Survey plan prepared by Taluk Surveyor.

Petitioner's Witness        :    Nil

Respondents' Witness       :    Nil

Id/-  
Munsiff.

Typed by : KSL  
Compd by :

//True Copy//

Examiner.

Carbon copy issued as per order in I.A.

**Draft Order**

**in**

**I.A No.1747 of 2018 in O.S No.167/2008**

**Dtd: 30.08.2018**

**Handed over to the B.C on.....**